



## REPORT OF THE ARAB FORUM ON ASSET RECOVERY

### A. Opening Session

1. The opening session was chaired by Dr. Ali Bin Fetais Al Marri, Attorney General of Qatar, the panel of distinguished speakers featured H.E. Sheik Hamad bin Khalifa Al Thani, Emir of Qatar; H.E Moncef Marzouki, President of Tunisia; a Video message from President Barak Obama, President of the United States of America; Mr. Mike Froman, U.S. Deputy National Security Advisor for International Economic Affairs, United States of America; H.E. Dr. Nabil el-Arabi, Secretary General of the Arab League; and Mr. Leonard McCarthy, Vice President, Institutional Integrity, World Bank. Dr. Al Marri opened the Forum by welcoming participants to Doha and stressing that the recovery of assets required the cooperation by all countries represented at the Forum. He further underscored both the ethical and legal responsibility of all states to aid in the return of stolen assets to the legitimate owners.

2. H.E. Sheik Hamad bin Khalifa al Thani warmly welcomed all the delegations to Qatar and recognized that the Forum came at a crucial moment in the international effort to recover stolen and misappropriated monies and return the same to the Arab countries in transition. He emphasized that the goals of the Arab Forum on Asset Recovery require cooperation between countries and that while the measures taken thus far were laudable, it was hoped that the Forum would further advance efforts to facilitate the recovery and return of assets.

3. H.E. President Moncef Marzouki addressed the issue of asset recovery and economic freedoms in the context of the Arab Spring. He spoke of the successful revolutions against despotic regimes and the price paid by so many who had lived in despair while a select few flourished, mainly due to a lack of accountability and, in some cases, complete impunity. However, times have changed and President Marzouki expressed the ardent resolve of Tunisia to

recover stolen assets and to hold to account those responsible for wide spread corruption. In the two years since the revolution, some progress has been made in pursuing the recovery of asset looted by the former regime and its cronies, yet obstacles remain. He particularly expressed frustration over the lack of information available about assets frozen in foreign jurisdictions and the slow or deficient response to requests made to receive information and/or cooperation in the tracing, seizing, confiscation and return of assets.

4. President Obama spoke to the Forum via video message. The President affirmed that the United States stands with those seeking their universal rights and supports reform across the region. He emphasized the need for G8 and other Deauville partnership countries to work together in the recovery and return of stolen assets to the people of countries like Tunisia, Egypt, and Libya. These funds are desperately needed to spur economic opportunities, create jobs, foster private sector development, and fund social programmes. The President emphasized that the United States will be a partner in efforts to strengthen the rule of law and combat corruption and stand with those who embark on reforms.

5. Mr. Mike Froman highlighted the growing demand for political freedom and economic opportunity in the region. Underscoring that corruption is not unique to any one region or country; theft and bribery by officials weakens confidence in public institutions and undermines social, political and economic development. Efforts to facilitate asset recovery are a key in combating corruption. The United States, as the current chair of the G8 and the Deauville Partnership with Arab countries in transition, has therefore put a focus on efforts to enhance the tracing, seizure, confiscation, recovery and return of stolen assets. Mr. Froman outlined the goals of the Forum as i) improving the understanding of each other's legal systems so as to strengthen international legal cooperation; ii) sharing best practices for legal and institutional reforms; and iii) providing insight on capacity building needs.

6. Dr. Nabil el-Arabi stressed that the recovery of assets held by corrupt regimes is of concern to the whole international community, not just the Arab countries. As such, the credibility of Governments in the region is at stake, as well as the commitment of countries where assets are located. He underscored the importance of States parties to the United Nations Convention against Corruption (UNCAC) to act swiftly in the freezing of assets as well as to make the process of recovering and returning such assets more efficient. He further emphasized

that the Arab league will continue to press for the effective implementation of UNCAC to support Arab countries in the exercise of their right to demand the recovery and return of stolen assets in line with the provisions of the Convention.

7. Mr. Leonard McCarthy concluded the opening session by underlining that justice will not be complete until the funds looted by corrupt officials have been returned to the people to whom they rightfully belong. He suggested that the Arab Forum provided an opportunity for countries of the Arab world to signal their determination to “raise the bar” for good governance in the countries where democracy is now taking root. This Forum thus can advance partnership and collective action, bringing together the G8, the Deauville Partners, and officials from throughout the region. Mr. McCarthy also stressed that managing public expectations would be difficult and the need to build technical capacity in support of the effective pursuit and recovery of stolen assets. In this context he offered the services of the Stolen Asset Recovery Initiative, a joint programme of the World Bank and the United Nations Office on Drugs and Crime, which could serve as a resource of specialized knowledge and expertise, and as a facilitator of international cooperation.

#### **B. Session I – Expectations towards the Arab Forum on Asset Recovery**

8. Session I was moderated by Mr. Marcus Davis, Ministry of Foreign Affairs and International Trade, Canada. The speakers included Mr. Nouredine Bhiri, Minister of Justice of Tunisia, Dr. Mohamed Mahoub, Minister of Legal and Parliamentary Affairs of Egypt, Mr. Ibrahim Beshyia, Attorney General of Libya, Dr. Ali Al-Alawash, Office of the Prosecutor General of Yemen, Mr. Dimitri Vlassis, Chief, Corruption and Economic Crime Branch, Division for Treaty Affairs, UNODC, Mr. Alessandro Busacca, Minister Plenipotentiary, Ministry of Foreign Affairs of Italy, and Mr. Dominic Martin, Director, Foreign and Commonwealth Office of the UK.

9. The representative of Tunisia stressed that the recovery of stolen assets was not a favor but a legitimate request of affected countries and a duty for the international community. The people in the Arab countries in transition had been deprived of their national wealth that had been transferred to foreign countries using foreign banks. International treaties establishing rights for the victim countries are to be respected and implemented. This is a test as well as an opportunity

for the international community to show its commitment. No country should act as a safe haven for stolen assets or for those who stole them.

10. The representative of Egypt stressed that the recovery and return of stolen assets is not only a legal issue, but a moral and political imperative. There should be political will for addressing the problem without delay. No country should use technical and legal pretexts to delay or refuse the return of stolen assets. He emphasized that the basis for requesting and providing mutual legal assistance is UNCAC which requires countries to establish or adjust their procedures, laws and institutional frameworks. He expressed his reservations as to the level of compliance with the provisions of UNCAC by countries presently cooperating with Egypt in the tracing, seizure, confiscation and recovery of assets. While acknowledging the complexity of asset recovery, he underscored his dissatisfaction with the progress made thus far, and expressed his expectation that the Forum would help to identify shortcomings and determine practical solutions to persisting problems in information exchange, rapid freezing of assets, evidentiary requirements and mutual legal assistance for the purpose of confiscation and return of assets.

11. The representative of Libya stressed the importance for requested countries to cooperate effectively in the process of tracing, seizing, confiscating and recovering assets. He highlighted the need for sharing information relating to bank accounts and real estate that were held by corrupt leaders and their associates, sharing the list of companies owned or shared by Libyan nationals, facilitating non-conviction based asset forfeiture, establishing specialized units for asset recovery, and the provision of technical assistance. Libya also suggested giving the Forum a legal personality, that can hold a database to be shared with the concerned country, and that can assist in capacity building of relevant national authorities.

12. The representative of Yemen talked about his country's efforts in establishing a legal infrastructure and appropriate judicial entities to support asset recovery and, in this context, highlighted the need to build knowledge, skills and expertise. He stressed the importance for the Forum to come up with a coordination mechanism between requesting and the requested countries, to hold regular meetings to monitor progress in asset recovery cases, to expedite the return of assets, and to facilitate mutual legal assistance. He also suggested creating a permanent structure to coordinate efforts and assist countries in asset recovery. This structure could be located in Qatar, which could also hold its first presidency.

13. The representative of UNODC underlined the crucial importance of Chapter V of UNCAC providing for the international legal framework on asset recovery. Asset recovery only works if this framework is effectively and actively used by States parties, and when barriers and obstacles are identified and overcome. He stressed that there is a lot of hope, heightened expectations, and a strong sense of urgency shared by many countries in terms of the effective implementation of UNCAC, and of Chapter V in particular. However he acknowledged that success would take time because the processes and procedures are complex. Due process is necessary to protect basic human and civil rights, but should not be an excuse for unnecessary delays.

14. The representative of Italy expressed strong support for the Deauville partnership and said that time had come to translate words into action; the Arab Forum being a very promising avenue to reach this objective. He emphasized the need for legal tools like non-conviction based forfeiture, enhanced coordination among asset recovery agencies at the domestic and international levels, and the use of special investigative techniques to follow the money trail.

15. The representative of the UK stated that his country was fully committed to working closely with its international partners and forging close relationships with practitioners in order to achieve asset recovery. He expressed hope that the Arab Forum will become the catalysts to induce cooperation. He underlined that the World Bank, StAR, and UNODC played an important role in advancing the asset recovery agenda. He expressed his hope that the asset recovery guides prepared by the UK and other G8 countries would turn out a useful contribution in assisting Arab countries in reaching out and cooperating more effectively with G8 countries. He concluded by confirming the commitment of the UK as next president of the G8 to take forward the asset recovery agenda.

### **C. Session II – Successes and Challenges: Lessons learned by the Deauville partnership countries in seeking the recovery of assets**

16. Session II was moderated by Mr. Aziz Ajbilou, Secretary General from the Ministry of General Affairs and Governance, Morocco. The panel consisted of two speakers: Mr. Mohamed Askri, Ministry of Justice, Tunisia and Mr. Jeremy Rawlins, Crown Prosecution Service, United Kingdom. The session outlined the success and challenges encountered thus far by both requesting and requested countries in pursuing the recovery of assets diverted from the Arab

countries in transition. Participants from Tunisia, Egypt and Yemen contributed to the discussion, as well as a number of journalists.

17. Mr. Mohamed Askri discussed the primary legal, institutional and operational successes and challenges in tracing assets and cooperating effectively in their seizing, confiscation and return. He first addressed the current situation in Tunisia and acknowledged the corruption left in the wake of the recently ousted leaders. With the fall of the previous regime, Tunisia adopted a strategy to trace assets and recovery money stemming from corruption, which, in the most part, is located in foreign jurisdictions. Following the fall of the previous regime, judicial and law enforcement authorities took immediate action, with the first requests for mutual legal assistance being issued only days after the ousting of the former head of state. Mr. Askri acknowledged the progress made in pursuing the recovery of assets in some countries, most notably Switzerland, during the past two years, yet in others Tunisia still faces significant challenges. Some examples include: the lack of databases of account numbers and account holders, bank secrecy laws and inability to access information, lack of political will, unanswered requests for information, and delays or disruptions in the recovery process due to appeals or domestic court decisions. The speaker also cautioned that despite UNCAC providing a comprehensive legal framework for international cooperation for the purpose of asset recovery, most countries continue to apply their national laws and procedures often with outcomes which appear not to be in line with the requirements of the Convention. Legal challenges are exacerbated by the lack of human and financial resources to effectively pursue and uphold the recovery process.

18. Mr. Jeremy Rawlins addressed many of the same issues, highlighting the challenges from the requested state perspective. He argued that problems to international asset recovery cases have generally been caused by a combination of legal, institutional and operational factors including: i) a knowledge gap on the process and legal requirements of seeking mutual legal assistance; ii) a knowledge gap of the laws and legal systems of each other's jurisdictions; iii) formal requests were made in respect of a large number of individuals generally with little information as to the basis for suspicion and why it was believed that the individuals held assets in the UK and where those assets might be located; iv) little or no previous contact between officials from the requesting and requested states; and v) the interpretation of the EU restrictive measures. As relates to the first four challenges, the speaker emphasized the importance of

dialogue among practitioners at all stages of the asset recovery process - “dialogue is everything”. As concerns the interpretation of EU restrictive measures, the speaker indicated that these measures are a good example of collective action by the EU and have been effective in administratively freezing assets. That said, the restrictions only apply to a limited number of persons, are time limited, and do not provide a mechanism for returning assets to the requesting states pursuant to a formal MLA request to enforce a confiscation measure. Moreover, the UK has experienced difficulties in sharing information related to the monies frozen in execution of EU restrictive measures with third parties, including with the countries seeking the recovery of the respective funds.

19. A lively debate followed featuring focusing in particular on the challenges and length of the asset recovery process. Several participants expressed their frustration with what they considered undue delays of some countries in responding to mutual legal assistance requests. Also raised was the issue that experiences in cooperating with different countries, in particular across legal systems, tend to be rather different – a situation which renders the management of expectations particularly challenging. Another issue of concern related to the continuing availability of funds to former regimes in particular, as such funds in some cases were suspected to fund terrorism and insurgency. It became evident from the debate that the need for dialogue existed at multiple levels, involving a multiplicity of actors, including both practitioners and policy makers.

#### **D. Work Stream 1 for Investigators, forensic auditors and FIU staff**

##### Session III: Getting Started

20. The panel was chaired by Judge Akram Masadeh of Jordan and featured two presentations by Ms. Habiba Ben Salem, Tunisian FIU and by Mr. Barry Ellis from the Serious and Organized Crime Agency, UK.

21. Focusing on the development of a case strategy to investigate corruption by high level officials with a view to achieving asset recovery, Ms. Habiba Ben Salem discussed the strategies adopted by the Government of Tunisia to create the National Committee on Investigating Corruption and Wrongdoings. The committee adopted an intergovernmental coordinated approach involving the Ministry of Interior, the Ministry of Justice and the Ministry of Foreign

Affairs, including embassies, to investigate the crimes and gather financial information about individuals, whether in Tunisia or abroad. Regarding the pursuit of claims abroad, the Committee decided to create a legal office to pursue corrupt officials with a view to freezing their assets abroad. This work was bolstered by engagement with StAR aimed at improving Tunisian capacity for asset recovery. Notably, the presentation described how Tunisia obtained information about financial transactions within Tunisia and abroad that could be used for the purpose of investigations. It was noted that some States refused to provide information due to the lack of a secure information sharing mechanism. This was particularly problematic for countries that are not members of the Egmont group, a network of FIUs which had been founded in 1995 with the objective, *inter alia*, to facilitate the exchange of information and advance cooperation in the development of training programmes and the sharing of expertise. Taking this into account, Tunisia had established its FIU and subsequently joined the Egmont group. She outlined the importance of the establishment of a financial analysis system and how it had helped the Tunisian asset recovery effort, in particular in terms of conducting financial investigations. She concluded by emphasizing that the success of the system was still contingent on the readiness and ability of relevant authorities in other countries to effectively cooperate.

22. Mr. Barry Ellis outlined in his presentation the operational challenges to asset recovery, in particular as concerns the gathering, analysis and exchange of intelligence in support of requests for asset recovery. Drawing on the UK Serious Organized Crime Agency's (SOCA) experience, he pointed out how misunderstandings and miscommunication can pose barriers to effective asset recovery. On the side of the requesting state, this can include not knowing who to contact for advice on how best to proceed as well as not knowing what information can be obtained by either formal or informal approaches to cooperation. These challenges are typically exacerbated due to difficulties in securing relevant intelligence needed to trace assets as well as in producing evidence of the underlying offences and establishing a link between the alleged offences and the assets. It was noted that requesting States often rush into using formal mutual legal assistance before gathering enough intelligence and information to build a case for structured and effective MLA. As such, requesting States are encouraged to gather supporting evidence before they pursue formal MLA. In turn, requested States face their own challenges in maintaining the confidentiality of sensitive intelligence. In this respect, SOCA can share information securely via the Egmont Group. He also highlighted that the UK Guide on Asset

Recovery contained more information on how SOCA can share financial intelligence to support an investigation. He underlined, however, that SOCA was not in a position to share information unless it was in accordance with a person's right to personal data protection and other human rights.

23. Some countries expressed frustrations with the pace of asset recovery process citing the ethical obligation to return assets. However, other countries noted that all states are operating in an international legal framework that relies on cooperation between domestic legal systems and that we must move beyond expressions of frustration that lead to inaction without working through the process of asset recovery. As such, participants were encouraged to take advantage of the expertise at the Forum to learn how they can find a common path of collaboration. Emphasizing that working together was a learning process; participants were called upon to continuously develop greater mutual understanding of legal systems and procedures. The Chair further observed that while frustration is normal, giving into frustration will not persuade a court so we are all beholden to explore methods to overcome frustration to ensure that States can all fight the ravages of corruption effectively.

#### Session IV: Sources of corporate, financial and property information and their use in financial investigations

24. The session was moderated by Mr. Thierry Freyne, Deputy Public Prosecutor, Belgium. The panel consisted of three speakers: Mr. Daniel Thelesklaf, FIU, Liechtenstein; Ms. Noora Bahar, FIU, Qatar; and Mr. Frederic Raffray, Crown Prosecutor, Guernsey. The session outlined the challenges in identifying the sources of corporate, financial and property information needed for financial investigation, the methods that can be used to access this information, the potential gaps and the role of FIUs in gathering and using these sources of information.

25. Mr. Thelesklaf presented on the experience of Liechtenstein in tracing and freezing the proceeds of foreign corruption. He stated that international asset recovery does not work satisfactory despite the fact that (i) with the entry into force of and almost universal adherence to UNCAC, the necessary legal framework is supposedly in place, (ii) the political will has been emphasized on many occasions, and (iii) the technical expertise is available, through e.g the Stolen Asset Recovery Initiative as well as the International Center on Asset Recovery. He

stressed that during the first stage of an asset recovery process, the tracing and detecting possible proceeds of crime, a formal MLA is not necessarily a useful tool in pursuing this objective. Instead he recommended making better use of the instruments and institutions already established to fight money laundering. More specifically, Mr. Thelesklaf emphasized the importance of: (i) collecting intelligence through FIU to FIU channels (Egmont group) before entering into formal MLA; (ii) using the powers of FIUs – where available - to freeze assets; (iii) identify a “guide” that can assist in navigating the legal system of the country where the assets are suspected to be located; (iv) securing fair representation; and (v) mobilizing support by donors, when developing countries are involved. In the discussion that followed, participants focused in their questions on how to access financial information in Liechtenstein. The speaker noted that, while most of the information is received from suspicious transaction reports to the FIU, there is also the possibility of reaching out proactively to financial institutions, although in his experience this did not constitute a very practical avenue given the large number of financial institutions in Liechtenstein. Another issue raised was the possibility of spontaneous information sharing within the framework of the Egmont group and the powers of FIUs to suspend transactions.

26. Ms. Noora Bahar outlined some of the obstacles encountered in the process of asset recovery. These obstacles are mainly due to the huge amount of money involved, the cross border dimensions of the transactions, the sophistication of organized crimes, and other challenges concerning legal systems and frameworks. She then stressed the need for greater harmonization of laws and regulations on both national and international levels that govern the availability and sharing of information. She explained that the investigation of money laundering cases, for which corruption is a predicate offence, can be challenging and is often rendered difficult due to the lack of an uninterrupted paper trail. She stressed that the Qatari FIU had two main roles to play, first the provision of training and awareness raising among all relevant stakeholders, and second the gathering of information and the preparation of intelligence files. The speaker confirmed the powers of the Qatari FIU to collect, inspect, and share information on suspicious financial transactions.

27. Mr. Raffray outlined the avenues available to access corporate and financial information in the Bailiwick of Guernsey. This included how information can be made available to

international partners in support of swift asset tracing and recovery processes. He agreed with comments made by others that mutual legal assistance requests were not the instrument of choice in the initial stages of an asset recovery case. He further focused on the type and quality of information which was available from financial institutions acting in compliance with know-your-customer procedures in Guernsey; in particular that relating to the identification of beneficial owners. He acknowledged that even in well regulated jurisdictions, with compliant financial institutions, criminals were still able to give incorrect information as to beneficial ownership to financial institutions. There were some complaints about how challenging it is for requesting countries to produce evidence in support of their requests, and how good faith from the requested country is critical to solving this problem. One recommendation was given to requesting countries when facing technical barriers in accessing beneficial ownership information in a requested country, in cases involving complex multi jurisdictional structures:- if beneficial ownership was proving difficult to obtain in one jurisdiction, regard should be had to the connections the structure had to other jurisdictions; as it was often possible to access beneficial ownership information as to the structure from a well regulated jurisdiction.

#### Session V: Getting Started

28. The panel was chaired by Major Vincente Corral Escriz, Central Criminal Investigation Unit, Guardia Civil, Spain; and featured presentations by Mr. Jean Pierre Brun, Senior Financial Sector Specialist, StAR; by Mr. John Edwards, Director, Criminal Division Law Officers Department, Jersey; and Mr. Frederick Raffray, Crown Prosecutor, Guernsey, both members of Camden Asset Recovery Interagency Network (CARIN); as well as by Mr. Boudewijn Verhelst, Chairman of the Egmont Group.

29. Focusing on how the StAR/INTERPOL Focal Point Network can be effectively used, Mr. Brun noted that effective MLA required effective investigations and effective exchange of information between states. To this end, the network was described as a potentially highly effective tool for practitioners in view of its expert membership and global reach. It provides contact information for asset recovery focal points in more than 100 countries, a secure message systems allowing for the exchange of sensitive and confidential information among focal points, general materials that inform asset recovery proceedings, the possibility of setting up case specific databases allowing for the secure storing and sharing of information by states involved

in the investigation, as well as bilateral fora to share information effectively. Based on these resources, the network was noted to have significant potential from an operational perspective.

30. Focusing on the Camden Asset Recovery Interagency Network (CARIN network), Mr. John Edwards and Mr. Frederick Raffray described how this network was created 10 years ago to foster informal cooperation among practitioners, initially of the European Union, dealing with transnational crime, with Europol providing Secretariat support. Adopting a multi-agency approach, the aim of CARIN is to increase the effectiveness of members' efforts in depriving criminals of their illicit profits through the achievement of nine key objectives: (i) establish a network of contact points; (ii) focus on the proceeds of all crimes within the scope of international obligations; (iii) establish itself as a centre of expertise on all aspects of tackling the proceeds of crime; (iv) promote the exchange of information and good practice; (v) make recommendations to policy making and legislative bodies such as the European Commission and the Council of the European Union relating to all aspects of tackling the proceeds of crime; (vi) act as an advisory group to other appropriate authorities; (vii) facilitate, where possible, training on tackling the proceeds of crime; (viii) emphasize the importance of cooperation with the private sector in achieving its aims; and (ix) encourage members to establish national asset recovery offices. Unlike, the StAR Focal Point Network, it does not provide a secure platform for the exchange of information, but it does provide access to a network allowing for the quick identification of experts through its contact point system and for the convening of bilateral and multilateral meetings in the context of specific cases.

31. Mr. Verhelst presented the role of FIUs and the Egmont Group in asset recovery. In this context, he noted in particular the utility of early informal discussion among practitioners of different jurisdictions with a view to identifying and securing assets for possible recovery. It was created to link FIUs together as part of a network to investigate and share information about asset movements with a view to facilitating the identification, tracing and where applicable freezing the proceeds of crime across multiple jurisdictions. For this framework to be effective, it requires a SAR (suspicious activity reporting system), *a priori* disclosure obligations, and direct freezing power (tracing is not enough). Approximately 60% of all FIU have freezing powers on an interim basis. Such powers enable the FIU to freeze temporarily specific transaction and/or accounts with a view to providing time for the FIU to complete its financial analysis and to

inform appropriate law enforcement and judicial authorities, so that they may seize assets. In addition, some FIUs are empowered to ask other FIUs in the network to freeze assets temporarily. In addition, the FIU network provides a secure and real time informal communication system (FIU net). There are currently 131 FIUs in the Egmont Network.

32. The following discussion highlighted the need for informal cooperation to coordinate investigation within these asset recovery networks in a complementary manner. One of the participants noted that practitioners from the Arab Spring countries needed to be reassured that these networks will lead to practical results in the tracing, freezing, and confiscation and return of assets. In response, the presenters acknowledged that there is a gap in participation by Arab countries in CARIN, and encouraged participating jurisdictions, in particular from the Arab countries in transition, to send their best practitioners to attend the meetings of the described networks. The same message was conveyed for the Interpol/Star Network. The meeting further discussed the extent to which the described networks had been used by relevant practitioners and authorities in the Arab countries in transition in support of their efforts to identifying, tracing and freezing assets held by members of the former regimes and their cronies. In this context, Mr. Verhelst clarified that the Egmont group and its members could not respond to generic requests for asset identification, but required details concerning the assets, accounts and account holders to trigger action. However, the Egmont group could issue generic advice to its members with a view to encouraging heightened attention and scrutiny. The Chair concluded by noting that informality of the networks is a key factor for success and that informal communication between states is necessary to facilitate successful asset recovery.

#### **E. Work Stream 2 for Prosecutors, Investigating Judges and Lawyers in Central Authorities**

##### Session III: International cooperation in criminal matters for the purpose of confiscation

33. The session was moderated by Mr. Yoshimitsu Yamauchi, Deputy Director of International Affairs Division, Criminal Affairs Bureau of Ministry of Justice of Japan. Presentations were made by Mr Adel Fahmey, Deputy Minister of Justice of Egypt and Mr. Pascal Gossin, Head of Mutual Legal Assistance Central Authority of the Federal department of Justice of Switzerland. During the open discussion, interventions were made by participants from

Egypt, Guernsey, the UK and the US. The focus of the session was on the state of play of mutual legal assistance requests submitted by countries, followed by a discussion on the challenges that have been encountered in this context – on the side of both the requesting and requested states.

34. The presentation by the speaker from Egypt highlighted that large sums of stolen monies had been hidden in unidentified countries around the world and that Egypt needed legal and technical assistance in tracing and recovering these assets. The Egyptian Prosecutor General's Office was committed to ensuring fair trials for members of the former regime. They had received extensive support from the StAR initiative and had requested mutual legal assistance from many countries, based on UNCAC, to trace, freeze and recover stolen assets. However, the response from some countries to those requests had been poor. He reiterated the need for stronger political support by all countries involved. Some of the obstacles put up by the requested countries to Egypt's MLA requests for asset recovery included unreasonably insisting on formal processes contrary to UNCAC, demanding evidence that Egypt was unable to provide, refusing to disclose relevant information, delays in responding to MLA requests and failing to recognize UNCAC as a sufficient basis for such requests. He concluded by acknowledging the difficulties faced by requested countries but emphasized that asset recovery required political will and expediency.

35. The speaker from Switzerland discussed Switzerland's long tradition of cooperation on MLA requests. He explained the development of the Swiss laws starting from the amendments to the International Cooperation Law to the more recently introduced changes the anti-money laundering legislation, including the strengthened administrative freezing powers. He recommended the establishment of a point of contact by each state for MLA. He further highlighted the following challenges including (i) inevitable time contingences due to the respect of due process rules associated with MLA requests, (ii) the problem of coordination among requesting and requested states, (iii) the issues of domestic proceedings already in place – which made it sometimes difficult to deal with MLA requests for the same matters, and (iv) the need for some degree of reliable information, before any investigative action could be taken or freezing orders could be issued.

36. The ensuing open discussion focused on these following points: (i) the establishment of points of contact between Egypt and Switzerland, (ii) a discussion of the bank secrecy laws in

place in some countries which could made it difficult to obtain immediate access to much needed evidence; (iii) the useful long duration permissible under Swiss law to administratively freeze assets (without a court order); and (iv) how to bridge the gap between the need for requested states to have more evidence about the location and source of stolen assets and the difficulty faced by Egypt in providing such evidence. The requesting states were frustrated when they were unable to obtain MLA due to lack of evidence, and at the same time were unable to secure information through informal channels. Several representatives of requested states commented that these difficulties were technical and surmountable and did not necessarily indicate a lack of political will.

#### Session IV: Securing Assets

37. The session was presided over by Mr. James Keay-Bright of the European Commission. Presentations were made by Ms Linda Samuel, Deputy Chief, Asset Forfeiture and Money Laundering Section, US Department of Justice and Mr Vicente Corral Escariz, Spanish Guardia Civil. During the open discussion, interventions were made by representatives from Egypt, Yemen, Switzerland, Japan and the UK. The focus of the session was on the law and procedures necessary to ensure a rapid and coordinated effort in the freezing of assets. The issues discussed included the different methods of freezing assets such as provisional measures, administrative action and formal MLA; and the sort of information needed to support such action in a requested state.

38. The presentation by the U.S. representative outlined the four principal methods available under US law to freeze criminal assets, namely: (i) enforcing a foreign order pursuant to an MLA request; (ii) restraining assets pursuant to an MLA request where no foreign order is in place; (iii) obtaining a provisional 30-day freeze based on a foreign criminal charge, and (iv) restraining assets pursuant to a domestic US investigation, whether criminal or non-conviction based. Ms Samuel stressed that whatever method was used, success was dependent on the ability of demonstrating a connection between the predicate crime in the victim country and any assets located in the US.

39. The presentation by Mr. Vincente Corral Escariz outlined the 2011 EU Financial Investigation Handbook, produced jointly by Spain, Italy and the UK. Of particular relevance to

the Forum was the second chapter dealing with asset tracing, which included definitions of key concepts and country guides setting out what assistance each EU Member State could provide, how to request such assistance and commonly encountered challenges. The third chapter covered legal processes in each EU Member State for restraining and confiscating the proceeds of crime. The Handbook would shortly be available on the Arab Forum on Asset Recovery website.

40. The following discussion focused on the type of information and legal thresholds for requesting asset tracing investigations and the freeze of any assets in the requested country. The U.S. explained that if there was reason to believe that stolen assets were in the U.S. then they could request a FINCEN “blast” which would oblige all U.S. banks to declare whether they held any assets of a given person or legal entity. Also during this session, the importance of open channels of communication and regular dialogue were stressed so as to enable requesting states obtaining “informal” advice on how best to seek assistance. The discussion then centered around the extent to which U.S. courts would review the fairness of proceedings in the requesting state. The U.S. explained that to enforce a foreign order, an Assistant Attorney General in the Department of Justice had to certify that it had neither been obtained without due process nor by fraud and that the issuing court had the authority to issue the order. In the past, some suspects whose assets were restrained hired American counsel to submit to the American courts that the proceedings in the requested state had been unfair or politically motivated. However, the respective courts had, ruled that, under U.S. law, it was not their role to decide on such issues. Ms. Samuel also highlighted that the U.S. applied the *de minimis* rule to MLA requests. Finally, the session discussed whether NGOs could, themselves, initiate a criminal investigation in the jurisdiction where the assets were located or make MLA requests. Both the U.S. and Spain stated that NGOs could not make MLA requests, which was reserved for states. A complaint or evidence from an NGO could, however, be used as a basis for a domestic investigation or a non-conviction-based recovery investigation.

#### Session V: Direct recovery and civil litigation

41. The session was moderated Mr. Levent Kurt, Judge and Head of Department, Directorate General of International Law and Foreign Relations Ministry of Justice of Turkey. Mr Charles Moynot, Deputy Head of Economic Law and Financial Affairs, Ministry of Justice of France

delivered a presentation. During the open discussion, interventions were made by representatives from Egypt, Yemen, Switzerland, Japan, the UK and the US. The focus of the session was to highlight the advantages and disadvantages of pursuing asset recovery as *partie civile* to a criminal enforcement action as well as by means of private civil litigation. The issues discussed included the methods and procedures by which a victim country could take advantage of becoming a *partie civile* and the interrelations with any requests for MLA by the same country.

42. The presentation by Mr. Moynot covered the changes in French law introduced in 2010 to make specific provision for the restraining of assets under criminal law and to create a new Asset Recovery Management Office. The French asset recovery system is based on post-conviction confiscation in criminal proceedings and allows for value-based confiscation orders. He further elaborated that, if France launched a domestic criminal investigation into assets stolen from an Arab Spring country, then that country could become a *partie civile* to the proceedings. The main advantage to the country was that it would get quicker and better access to the evidence gathered in the French investigation. However, the disadvantages were that a *partie civile* was not entitled to recover stolen assets but only to make a claim for compensation of damages suffered as a result of the crime. As in such cases the French authorities would typically open an investigation and prosecute for money laundering, in most cases it would be rather difficult for the *partie civile* to convincingly demonstrate any damages suffered from this type of offence. Moreover, any assets confiscated as a consequence of a domestic prosecution would be paid to the French Treasury and there were no direct mechanisms for returning the respective assets to the victim country. Therefore, being a *partie civile* was not a substitute for MLA in international asset recovery cases.

43. During the following discussion, it was suggested that requesting states could combine MLA with becoming a *partie civile* with a view to taking advantage of both systems. As ever, dialogue was key, as was obtaining strategic advice in advance from the requested state in terms of taking such an approach. Moreover, the meeting clarified that while NGOs might under certain circumstances be able to become *partie civile* to a domestic case, they could not obtain MLA or other similar assistance. The session further focused on the impact of parallel private civil proceedings on MLA requests. In general, such parallel civil actions whether it is by the requesting state or by an NGO in form of a public interest litigation, has no effect on MLA. Any

assets recovered would be returned to the requesting state under UNCAC rather than paid over to NGOs and there was no negative impact on the execution of MLA requests. The U.S. pointed out that where states themselves instructed lawyers and brought civil proceedings in the US courts this prevented the Department of Justice from speaking to that state directly as they were obliged to go through the lawyers, which had the potential to delay and hinder the provision of assistance.

**F. Work Stream 3 for Policy makers, legal draftspersons, staff of foreign affairs and technical assistance providers**

Session III: Creating an enabling policy environment

44. Mr. Yves Aeschlimann, Senior Financial Sector Specialist, StAR moderated the session and Mr. Jaikumar Ramaswamy, Principal Deputy Chief, Asset Forfeiture and Money Laundering Section, Department of Justice of the U.S. delivered a presentation on approaches to take the profit out of crime. The session highlighted the establishment of core legal, institutional, and operational frameworks to deprive offenders of their illicit gains. Key issues included how to make asset recovery a policy priority, identify the necessary operational resources to run an effective asset recovery system, establish institutions to support the system and ensure domestic coordination of these efforts.

45. The speaker outlined the four key features of an effective regime to recover the proceeds of corruption. First, there must be high level support from the relevant domestic stakeholders on an asset recovery policy in order to ensure that directives are followed. Without high level support there will be little chance of allocating adequate resources to support implementation of the policy. The speaker cited the U.S. experience where consistent support from the White House since 2008 helped establishing the U.S. Department of Justice's Kleptocracy Unit to combat foreign corruption. Second, manpower must be effectively managed. The U.S. has found that a task force approach where DOJ prosecutors, forensic accounting experts, and investigators from the FBI and the Department of Homeland Security work in the same office is crucial to success. A one-team approach keeps the various types of expertise focused on untangling the complicated web of financial dealings found in corruption cases and allows for quicker action to identify and freeze assets before they can be moved. The third component is international

cooperation between countries, international organizations, and NGOs who can exchange information and offer technical assistance so countries can hone their financial investigation skills to better identify and recover assets from corruption. Improved investigative skills ensure that when seeking assistance abroad, the requesting country will have the evidence to satisfy the foreign courts' requirements to freeze and confiscate stolen assets. Finally, a good asset recovery regime must be transparent so that the public can see that the stolen assets are being returned for the benefit of the people and their countries.

46. Several participants underscored the need for high-level political will to implement a policy that must be coordinated with all the relevant domestic stakeholders to effectively recover stolen assets. These stakeholders must meet regularly as well as promote awareness among the public that proceeds of crime and corruption undermine the integrity of the financial system. Task forces were also seen as an efficient and effective means of marshaling expertise to trace and confiscate stolen assets. Participants also noted the importance of several legal tools allowing for the easing of the burden of proof, such as non-conviction based forfeiture and a broadly construed value-based system of confiscation. All participants agreed that international cooperation was crucial to successful confiscation.

47. Some participants questioned the value-added by UNCAC. More specifically, they felt that the language of Chapter V was too general and allowed a requested country to refuse assistance on the basis that the request was "not reasonable" or not in line with the requirements of their domestic laws. They also expressed their concerns that there were no sanctions for a country which failed to meet its treaty obligations. There was a call for either revising the UNCAC or negotiating a new convention focusing on money laundering and making international cooperation easier. In response, it was noted that a new convention could take up to 8-10 years to negotiate and ratify. Moreover, there was no guarantee it would be as comprehensive as UNCAC, nor that there would be any guarantees for greater compliance. Several delegates suggested that there should be more outreach programs to better explain UNCAC and more discussion on ways to make it more effective. In this context, the upcoming second cycle of the review mechanism to the UNCAC would assess the level of compliance of States parties with the provisions of Chapter V of the Convention. This would provide an

opportunity for countries to identify legal and operational barriers and shortcomings in the effective implementation of the UNCAC by individual countries.

#### Session IV: Creating an enabling policy environment - Part 1

48. The session's moderator was Mr. John Edmonds (Jersey). Mr. Marcus Davies (Canada) and Mr. Ali Dawi (Libya) delivered presentations. The session highlighted specific legal measures, in particular decrees, which have been issued by some countries ordering the freezing of all assets of a list of individuals. Issues for consideration included: whether such domestic decrees are enforceable in a foreign jurisdiction, the evidentiary and procedural requirements for the provisional restraint of assets; factors in dealing with multi-jurisdictional claims; and the core legal ingredients of an effective asset recovery regime.

49. Mr. Davies outlined Canada's legal response to the developments in the context of the Arab Spring and the subsequent requests from Tunisia and Egypt to freeze the proceeds of corruption using UNCAC as the legal basis for the request. The Freezing Assets of Corrupt Foreign Officials Act, passed in March 2011, allows Canada to restrict the use of the assets following a written request asserting the alleged corrupt person acquired property illegally by virtue of their office or a personal/business relationship with an official. The Act also requires that the target must be a politically exposed foreign person, there is domestic turmoil in the requesting country, and it is in the interest of international relations to freeze the assets. The orders and regulations are extended to any person in Canada or a Canadian outside Canada who deals directly or indirectly in any property wherever situated of the politically exposed person (PEP). All financial institutions must determine and disclose whether they have possession or control of property belonging to a PEP. The challenges of implementing this legislation are multiple, including identifying property that may be exempted from being frozen as well as questions relating to the management of property that is frozen, noting that, Canada does not assume ownership of such property and therefore cannot act as a fiduciary with respect to such property. Moreover, creating and updating a PEPs lists is time-consuming as accuracy is crucial. Other general challenges consist in the identification of PEPs as well as of the assets to be frozen. It was also noted that the measures taken to freeze property do not eliminate the

requirement for states to make a formal request for asset forfeiture and recovery. Rather, the freeze affords requesting countries time to investigate crimes committed by their officials to gather evidence to make a formal request to Canada for asset forfeiture and recovery in compliance with Canadian law as described in Canada's guide to asset recovery. In particular, Canadian law requires that Canada conclude a bilateral asset sharing agreement with the country requesting the return of assets.

50. Mr. Ali Dawi presented Libya's approach to freezing assets in the wake of their revolution noting the unique challenges facing the country. First, due to the length of the revolution, corrupt officials had more time to hide their assets. In addition the children of leaders and their associates were more aggressive in pursuing illegal proceeds and more sophisticated in creating layers of financial transactions during the final years of the regime. After the revolution, Libya had to move quickly and they relied on anti-money laundering decrees to restrain domestic assets. The main advantage of this decree had been that it allowed the restraining of assets immediately for up to three months. A prosecutor may renew the application for restraint if more time is needed. The main challenge is that 95% of Libya's economy is cash based and that therefore upwards of 95% of domestic stolen assets are outside the financial system. Moreover, beneficial ownership of assets is often disguised through the use of front men, shell companies and pseudonyms. Tunisia has recognized Libya's decree system, but other countries have issues with this system. Libya is currently working on legislation that will be more effective and meanwhile wishes to work with foreign partners to give and receive more information on the assets held by members of the Gaddafi regime.

51. Concerns were expressed over mediating the impact of freezing orders by decree on families of politically exposed person especially when a child's name was used to attempt to disguise the true owner. In a decree-based system there was the option of excluding reasonable amounts for the family's welfare, while in an order-based system, only those assets were frozen of names provided to the requested country. One of the key discussions arose over the frustration Deauville Partnership countries feel with the delays in responses to their international requests. One problem identified was that common Arabic names can often times be transliterated into various English spellings which makes it difficult to track assets such as bank accounts. Suggested remedies included for Arabic speaking countries to provide names in English as well

as Arabic in MLA requests and related communications and to require banks to collect names in both English and Arabic. In addition, requesting countries should attempt to provide passport information of individuals because it includes useful personal information. Furthermore, many countries, especially major financial centers, now use electronic visas that could be linked to the passport number and name. These electronic visas provide considerable identifying information that could be used to verify the suspected individual. Finally, it was pointed out that delays in responses are due to lengthy processes on both sides. Either information gathering processes on the requesting side or judicial processes on the requested side - or vice versa - could be better understood through more fora such as this one, as well as through the asset recovery guides that are now posted in Arabic on the Arab Forum on Asset Recovery website ([http://www1.worldbank.org/finance/star\\_site/Arab-Forum/Contact-Arab-Forum.html](http://www1.worldbank.org/finance/star_site/Arab-Forum/Contact-Arab-Forum.html)). If Deauville Partnership countries could also produce outlines of their procedures it would vastly assist the understanding between countries by identifying differences in systems and help bridging such differences.

#### Session V: Creating an enabling legal environment – Part 2

52. The session was moderated by Mr. I. Boychenko, Head of Office for Bilateral Cooperation, International Cooperation Department, Federal Financial Monitoring Service of the Russian Federation. The session featured two speakers: Capt. Alessio Costagliola, Guardia di Finanza, Italy and Ambassador Rita Adam, Deputy Director of International Law, Federal Department of Foreign Affairs, Switzerland. The session focused on rebuttable presumptions, non-conviction based forfeiture and other legal tools available for effective asset confiscation with the objective of providing a comparative review of these legal tools and consider how the burden of proof can be met for corruption related cases.

53. Capt. Alessio Costagliola presented the legal instruments available in Italy to trace and recover assets. These tools can be divided into two categories: common crime legislation (the penal code) and anti-organized crime legislation. Under the former, only assets directly connected to a crime may be confiscated. However, under the latter, property of an individual convicted of particular organized crime related offences, such as the participation in a mafia type organisation, drug trafficking, money laundering, etc., may be confiscated if the offender cannot justify the origin of the property and it is disproportionate to the person's legitimate income.

Furthermore, Italian anti-organized crime legislation provides for are personal and financial preventative measures, including seizure and confiscation powers with a view to depriving suspected *Mafiosi* (socially dangerous people) of inexplicable wealth and/or the proceeds of crime. More specifically, the legislation provides for investigative powers to assess sources of income of suspected people (and of third parties) and to seize, and eventually confiscate, any assets which are directly or indirectly controlled by the suspected *Mafioso* and which either are disproportionate to his or her known legitimate sources of income, or when there is sufficient evidence that the assets are the proceeds of crime. The law effectively creates an explanatory burden for the defendant obliging him/her to demonstrate the legitimate source of his or her wealth.

54. Ambassador Rita Adam, outlined the Swiss asset recovery experience and presented some of the innovative tools used in Switzerland to facilitate asset forfeiture and recovery. Using specific case examples, the speaker highlighted the lessons learned in the last twenty-five years of experience. These examples included: i) a legal framework allowing to immediately freeze assets in order to prevent them from being transferred elsewhere; ii) the use of the reversal of the burden of proof; iii) the introduction of legislation to deal more effectively with situations in which the requirements of an MLA procedure cannot be met by the requesting state due to the collapse of all or a substantial part of its judicial apparatus (the Return of Illicit Assets Act).. Ambassador Adam further presented the three keys to success, as gleaned from the Swiss experience. The first lesson is the ability to freeze the assets as swiftly as possible. Secondly, partnership and cooperation between countries was imperative. This cooperation must be fostered early on and dialogue should be on-going in order to best ensure that both parties are well informed of the status of the process. Finally, she emphasized the importance of political will in both the requesting and requested countries.

55. The discussion centered mainly on the issues of rebuttal presumptions (reversal burden of proof) and the use non-conviction based forfeiture. Several delegates raised concerns about the difficulties of providing the required evidence and voiced frustration with the lengthy process by which assets may be recovered. The speakers responded to these concerns by acknowledging that their respective countries are acutely aware about how important it is to requesting countries to have expeditious recovery processes. It was acknowledge that there can be perceived tensions

between due process requirements and the speedy return of assets. That said, some of the innovative tools now available for asset recovery, such as the reversal of the burden of proof, are designed to speed up the process.

56. The issue of the constitutionality of rebuttal presumptions was addressed by Capt. Costagliola who explained that the Italian constitutional court had ruled that the reversals of the burden of proof contained in the Italian legislation do not violate human or constitutional rights. One participant also raised whether it would be thinkable to apply a similar framework as had been developed in the context of terrorist financing to stolen asset recovery.

#### **G. Session VI (and VIII)**

57. Mr. Dimitri Vlassis, UNODC and Mr. Oliver Stolpe, StAR, moderated the technical assistance sessions which provided an opportunity for the Arab countries in transition as well as the providers of technical assistance to discuss technical assistance needs and priorities.

58. The Libyan delegation outlined assistance currently being planned under the Stolen Asset Recovery Initiative. In particular, relevant Libyan institutions require better understanding on how to approach most effectively different key jurisdictions where assets are suspected to be located, as well as skills in drafting MLA requests, conducting financial investigations, unraveling the corporate veil and engaging in asset tracing and freezing across multiple jurisdictions. The delegation further specified that assets had been looted from Libya mainly using three methods: (1) the embezzlement of raw oil, (2) the use of inflated contracts for goods and services, and (3) contracts with bogus companies operating out of foreign jurisdictions. Libya also specified that it had contracted the services of law firms in Tunisia, Lebanon and the UK to assist in the pursuit of illicit assets. Technical assistance providers suggested in particular the use of the UNCAC self assessment checklist for the further identification of technical assistance needs and priorities.

59. The Yemeni delegation did specify that so far Yemen had not engaged in any systematic asset recovery effort nor received any technical assistance for that purpose. Presently, the main priorities consisted in the systematic review of the legal and institutional framework in support of

asset recovery and the development of comprehensive capacity building programme to address any emerging shortcomings. Yemen further raised the need for a functional database allowing the FIU to collect, store and analyze data received from the financial sector and other reporting entities. Technical assistance providers expressed their readiness to assist Yemen, if a respective request should be made.

60. Tunisia outlined the technical assistance it had already benefited from or was currently receiving, including assistance from StAR, World Bank, UNODC, INTERPOL, the EU and UNDP. As a result of these strategic partnerships, various relevant authorities had benefitted from several training courses, training of trainers, continuing strategic advice and mentoring. As concerns technical assistance needs and priorities for the future, Tunisia highlighted in particular the training of judges, the institutional development and capacity building of specialized judicial entities, the need to build a domestic cadre of trainers and the provision of assistance to the special task forces on asset recovery.

61. The EU requested Tunisia for a list of TA priorities and offered assistance in setting up bilateral meetings with any of the European countries where stolen asset originating from Tunisia are suspected to be located. The United States offered the possibility for Tunisian prosecutors to engage in an exchange programme that would allow Tunisian prosecutors to visit relevant U.S. authorities, while at the same time U.S. attorneys could assist Tunisian prosecutors. The U.S. further offered legislative drafting assistance as well as a curriculum course on financial investigations. The U.S. also indicated its readiness to engage in pre MLA discussions with Tunisia. UNODC announced the imminent posting of a UNODC programme officer in Tunisia who would further engage with all relevant stakeholders in the identification of technical assistance needs and services. StAR explained that in the coming months, its technical assistance would focus in particular on assisting Tunisian counterparts in prioritizing the actions of the specialized unit on investigating and prosecuting financial crimes, and setting up and facilitating any bilateral meetings between Tunisia and other jurisdictions. The OECD offered the use of a new initiative, ‘tax investigators without borders’. Canada offered its assistance through a program to be launched for parliamentarians and judicial officers.

62. Egypt outlined both its short term long term technical assistance needs. With regard to the former, Egypt requires help in consolidating technical assistance already provided by

developing through additional training a cadre of local experts on asset recovery and international cooperation in criminal matters. Furthermore, Egypt requested assistance in drafting appropriate legislation and developing legal mechanisms to better facilitate the recovery of assets. The long term TA needs involve capacity building for both the technical and judicial staff involved in asset recovery. In addition, the Egyptian FIU requires software for data collection, management and analysis.

63. Similar to the responses given to Tunisia, the delegates present reiterated their continued support for Egypt. The UK highlighted its offer to provide legal assistance to work towards a long term solution whereby a British prosecutor can be placed in Egypt to assist in particular in the cases involving the UK and other common law jurisdictions. UNDP highlighted two avenues through which it could provide assistance through its country office as well as through a regional project on Governance and Anti-Corruption in the Arab region. In addition, the UNDP offered assistance in data management in designing, monitoring, and updating systems. The EU mentioned an ongoing 2.5 Million Euro anti-corruption program, which is presently being implemented in cooperation with UNODC. UNODC mentioned its readiness to continue work with relevant Egyptian counterparts both in the context of the aforementioned EU financed project, as well as through StAR. The United States offered the possibility for Egyptian prosecutors to engage in an exchange programme that would allow them to visit relevant U.S. authorities, while at the same time U.S. attorneys could assist Egyptian prosecutors. The U.S. further offered legislative drafting assistance as well as a curriculum course on financial investigations.

#### **H. Session VII – From Words to Action**

64. The session was moderated by Jean Pesme, Coordinator of the Stolen Asset Recovery Initiative of the World Bank and UNODC. Marcus Davies from Canada, Shane Nainappan (on behalf of Nick Vamos) from the UK and Nancy Langston from the United States, who were designated Rapporteurs, presented the reports of the work streams.

65. The moderator reiterated the objectives of the Forum, which were to promote policy dialogue, regional training, develop a repository of information, contacts and a regional network. He said that the Forum presented a unique opportunity in bringing together relevant stakeholders,

including policy makers, judicial officers, prosecutors, investigators and financial intelligence analysts, for an open discussion of the challenges and expectations related to asset recovery by both the requesting and requested states. The Forum had also provided a unique platform for country delegations to engage in a high number of bilateral discussions.

66. The key challenges identified include the frustration over delayed responses and actions, undue formalism, occasional miscommunications, difficulties in accessing information, and differences in interpretation of the requirements of UNCAC. The meeting also had demonstrated that the present level of dialogue among countries was insufficient to achieve comprehensive mutual understanding of legal systems and how to best use the multiple formal and informal avenues to trace, seize and eventually confiscate and recovery stolen assets.

67. The Forum had helped to reinforce the awareness of asset recovery as a political priority and forge a stronger commitment to a common asset recovery agenda. It had also shown that this commitment would be measured by concrete results in actual asset recovery cases. The Forum had certainly demonstrated that a “business as usual” approach will neither meet expectations nor deliver these results. The gathering had proven the value of bringing together a diverse yet complementary set of backgrounds including policy makers and practitioners, as the latter are primarily responsible for delivering on the individual cases while former need to create the enabling environment. Moreover, the meeting had allowed countries to identify and communicate their technical assistance needs, while making it clear that such technical assistance could not constitute a substitute for tangible progress on cases.

68. Moving forward some initial conclusion were drawn by the chair, included : (i) the opening of domestic cases/investigations remains a largely untapped resource, (ii) more consultations and gathering of information is required at the pre-MLA stage – bilateral case consultations play a crucial role in this context, provided they are well prepared and conducted, (iii) as countries become more familiar with MLA requests and requirements, there are still significant challenges in terms of understanding the best channels and sources to access information and intelligence, including through FIU to FIU communications, INTERPOL as well as the effective use of existing asset recovery practitioners’ networks. In terms of specific follow-up action, he raised for further discussion (i) the need for the Deauville partnership countries to monitor the implementation of its action plan on asset recovery, including through

the possible use of already existing tools such as the UNCAC self-assessment checklist, (ii) the operationalisation of the asset recovery guides by developing them into training programmes and delivering training for asset recovery practitioners, including through the use of the Qatar based Center of Rule of Law and Anti-Corruption, (iii) use of the Forum as a platform for dialogue among practitioners and policy makers to continuously identify and address barriers to asset recovery, and (iv) the continued development of the Forum's website ([http://www1.worldbank.org/finance/star\\_site/Arab-Forum/](http://www1.worldbank.org/finance/star_site/Arab-Forum/)) into comprehensive one-stop repository of information on laws, tools, capacity-building opportunities and contact points for asset recovery in the countries of the Deauville partnership and associates.

69. In the ensuing discussion, Egypt, Tunisia, Qatar, the U.S., Italy and the UNODC intervened. Egypt stressed the importance of using the Forum contacts to organize bilateral meetings throughout the year and. The U.S. expressed their appreciation for the role played by StAR in organizing the conference and encouraged other countries to develop and publish their asset recovery guides on the Arab Forum website – a call which was supported by Italy. Italy further suggested that the Deauville Action Plan on Asset Recovery questionnaires, in which the G8 countries provided an update on actions taken in its implementation, be published on the website. Tunisia requested that the Arab Forum would elaborate a set of practical recommendations based on good practices in asset recovery. UNODC confirmed the possibility of using the UNCAC self assessment checklist for chapter V as the basis for producing a detailed assessment of the implementation of the asset recovery action plan and its impact.

## **I. Closing Session**

70. The closing session featured remarks by Dr. Al Marri, Attorney General of Qatar, Mr. Eric Holder, Attorney General of the United States and, via video message, Mr. Yury Fedotov, Executive Director of the United Nations Office on Drugs and Crime.

71. Mr. Fedotov expressed his gratitude to the Government of Qatar for hosting the Forum as well as to the G8 for organizing and supporting the event. He welcomed the objectives of the Forum, which seeks the swift recovery of assets and their return to Arab countries in line with the objectives of the Deauville partnership of countries but cautioned that the path is lined with legal and technical difficulties created by those who have diverted the assets. Thus the challenge

is to provide decisive support founded on the Deauville partnership platform. Mr. Fedotov pointed to the United Nations Convention against Corruption(UNCAC), as the universally agreed framework for asset recovery. However, he acknowledged, several countries, have raised concerns that, in recent asset recovery efforts, the Convention is not always fully observed. Therefore, it is the collective role of the Forum to grant international cooperation in asset recovery cases to ensure that there is no impunity for these criminal. The freezing and returning of assets is not simply a symbolic gesture, it is a strong demonstration that rightful ownership can and will be restored. Finally, Mr. Fedotov highlighted the role of the StAR initiative in developing technical skills and knowledge, offering training and building bridges between all partners cooperating in the recovery of assets and called upon all participating countries to take the opportunities offered by the Forum and to improve their cooperation with these Arab countries.

72. U.S. General Attorney, Eric Holder addressed the Forum and again thanked the government of the State of Qatar – particularly His Highness the Emir and His Excellency Dr. Al Marri – for hosting this important gathering. He commended each of the delegations represented here for their contributions in advancing the ongoing dialogue about the role that countries can play – and the responsibilities that they must fulfill – in combating corruption, recovering stolen assets, and establishing a framework for cooperation and collaboration not only throughout this region – but across the globe. He acknowledged that the hard work done during the this inaugural meeting – building relationships, establishing guidelines for the type of information that needs to be exchanged, and discussing what evidence exists – will pay dividends for all citizens. He continued by recognizing that by participating in the Forum, countries have signaled their support for a worldwide kleptocracy initiative – and their commitment to the important work of recovering proceeds of corruption so that these assets can benefit the people of Egypt, Tunisia, Libya, Yemen and other nations that have struggled to combat corruption. The launch of the Arab Forum on Asset Recovery, will help ensure that direct engagement and robust enforcement can be prioritized by frontline practitioners and experts alike as they work to prevent and eliminate corruption throughout these and other countries in the region. Furthermore, this shared commitment is what has propelled the U.S. Justice Department to build and strengthen relationships with leading nongovernmental organizations and other independent actors around the world and helped to inform, to augment, and to re-energize their broad-based,

global efforts to confront a range of critical challenges – from fighting transnational crime and terrorism, to promoting global security and good governance, to ensuring equality and fair opportunity for all.

73. Finally, Mr. Holder reaffirmed that the United States intends to serve not as a patron, but as a partner; not as a monitor, but as a collaborator. He added that the asset recovery is a global imperative; it is everyone's duty to act together to develop the investigations, evidence, and expertise that will enable us to recover monies stolen through the violation of public trust. It is a shared responsibility and the U.S. understands that this work – though global in its reach – must begin at home.

74. The final speaker of the Forum was Dr. Al Marri, Attorney General of Qatar. He began by thanking the United States for its role as chair of the G8 and for its leadership. He expressed the hope that the commitment shown by the U.S. will be continued by the next chair of the G8, the UK. Dr. Al Marri then added that the freezing of the assets is only a first step and as such needs to be followed by the return of the assets to the countries of the Arab Spring. The Attorney General then shared Qatar's intention to continue to work on asset recovery issues in the region and offered the Center of Rule of the Law and Anti-Corruption as a central resource for these efforts. The Center will deliver some training programs on asset recovery in coordinate with the institutions and will work with StAR and will produce a regional guidebook, which will be available through StAR. He then concluded by stating his belief that the next meeting will not just be about speaking about asset recovery, but there will focus on action. He recognized the long road ahead and the challenging work yet to do, but ended with his hope that the objectives of the Arab Forum will be achieved.

## **J. Bilateral Meetings**

75. The Forum provided ample room for bilateral meetings among delegations. Over the course of the 3 days more than 30 bilateral meetings took place. In particular Egypt, Libya, Tunisia and Yemen availed themselves of this opportunity. In these meetings a wide range of topics were discussed, including case specific issues, such as the status of requests, progress on domestic procedures, delays or inaction following requests, as well as the explanation of judicial decisions. Many of the meetings were used to clarify legal technicalities, e.g. relating to the

obtaining of information, the freezing of assets, the formalities of mutual legal assistance requests and asset sharing arrangements. All delegations expressed their satisfaction with having had the opportunity to meet with their counterparts in other jurisdictions to discuss case status and details, improve their understanding of the requirements and opportunities offered by the legal systems of other jurisdiction and to outline their technical assistance needs and priorities.

#### **K. Meeting of Investigators**

76. Upon a request received by Canada and US, a specific side meeting was organized for investigators in particular. The meeting which was moderated by Mr. Jean Pierre Brun, StAR, focused on the relationship between FIUs and Law Enforcement authorities as well as need for better networking among law enforcement officials in the region. Egypt, in particular, argued that FIUs should be empowered to directly interact with foreign law enforcement authorities for the purpose of exchanging intelligence. In response, several delegates pointed out that one difficulty in elevating the role of FIUs in international cooperation is that the structure and function differ from country to country. In some, FIUs are administrative in nature and in others, judicial or even law enforcement. Moreover, participants discussed the option of enabling FIUs to join networks of asset recovery practitioners, such as the StAR/ Interpol network as well as the CARIN network. Several delegations expressed their reservations and insisted that as a priority, FIUs should interact with their direct FIU counterpart in other jurisdictions. It was also noted, that many countries are not represented in CARIN, especially those present at the forum. For that reason, asset recovery practitioners from the Arab countries were encouraged to join the StAR/Interpol focal point initiative as well as to consider organizing ad-hoc meetings of Law Enforcement authorities involved in specific cases. In addition, examining the feasibility of a regional network in MENA was mentioned as an option. The moderator then suggested that the conclusions of the discussion could be, at the minimum: 1. there is a need to encourage and help Arab countries to be as present as possible in the existing networks; 2. there is a demand for more information and training in the region with a focus on how to use the existing networks effectively. StAR then proposed more capacity training on how to pull together the different sources of information (pre- MLA) and help open the channels the flow of information.

